

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE THIRTIETH DAY OF JUNE
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE SRI DEVINDER GUPTA, THE CHIEF JUSTICE

and

THE HON'BLE Ms. JUSTICE G.ROHINI

WRIT PETITION NO : 10748 of 2004

Between:

- 1.Y.A.Prasad Reddy S/o Anji Reddy
ZPTC Kanigiri, Prakasam District
- 2 K.Dastagiri Reddy S/o Atchi Reddy
ZPTC Bestavaripet, Prakasam District
- 3 P.Venkateswarlu S/o Gunteiah
ZPTC Hanumanthanipadu, R/o OPP:Mandiram,
Kottapet, Kanigiri,
Prakasam District
- 4 B.Venkateswara Rao S/o Ramachandraiah
ZPTC Tirpuranthakam
Prakasam District
- 5 M.Sankar Reddy S/o Ranga Reddy
ZPTC Bhagyanagar, Ongole, Prakasam District.

..... PETITIONERS

AND

- 1 The Government of Andhra Pradesh rep. by its Secretary,
Panchayat Raj, Secretariat Building, Saifabad hyderabad
- 2 The Collector, Prakasham District, Ongole
- 3 Sri Mukku kasi Reddy Chairperson, Prakasam Zilla Parishad,
Ongole, Prakasam District

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an appropriate writ, order or direction, more particularly one in the nature of Writ of Mandamus, declaring the notice issued to the District Collector, Prakasam District on 5/06/2004 by 31 ZPTC Members of the Ongole Z.P.TC as arbitrary, illegal, and

fraud on law, if necessary by declaring Sec. 245(2nd proviso) of the Andhra Pradesh Panchayat Raj Act, 1994 and Rules 7&8 of the Rules relating to motion of No-confidence in Upasarpnach of Gram Panchayat or Vice President/President of Mandal Parishad or Vice-Chairperson/Chairperson of Zilla Parishad issued a G.O.Ms.No.200 P.R. &RD (Mandal-I) dt. 28/04/1998 as unconstitutional and issue consequential direction to the authorities not to proceed with the meeting for the consideration of motion of no-confidence against the 3rd respondent as scheduled on 1/07/2004 and to pass such other order or orders.

Counsel for the Petitioners: MR.K.R.PRABHAKAR

Counsel for the Respondents 1 & 2 : The Advocate-General
Counsel for Respondent No.3 : Mr.E.Ella Reddy.

The Court Made the Following :

ORAL ORDER: (per The Honourable Sri Devinder Gupta, the Chief Justice)

Petitioners, who are five in number, are the members of Zilla Parishad Territorial Constituencies, and were elected in the elections held in the year 2001. In this Petition, they are seeking a Mandamus to declare the written notice served on the District Collector, Prakasam District, on 5.6.2004 by 31 Z.P.T.C. Members of Ongole Z.P.T.C. of Prakasam District, as arbitrary, illegal and fraud on law, and, if necessary, by declaring the second proviso to sub-section (1) of Section 245 of the Andhra Pradesh Panchayat Raj Act, 1994, and, Rules 7 and 8 of the Rules relating to Motion of No-Confidence in Upa-Sarpnach of Gram Panchayat or Vice-President/President of Mandal Parishad or Vice-Chairperson/Chairperson of Zilla Parishad (for short "the Rules"), as unconstitutional and issue consequential directions.

The submission of the learned counsel for the petitioners is that out of 56 members of the Zilla Parishad Territorial Constituencies, 33

belong to Telugu Desam Party, 21 belong to Congress and one is Independent Member. 31 members belonging to Telugu Desam Party, taking undue advantage of the second proviso to sub-section (1) of Section 245 of the Act, thought of a novel idea of serving a written notice of the intention to move a no-confidence motion against the Chairman, Zilla Parishad, Ongole, who also happened to be belonging to the Telugu Desam Party, and, their intention being that after the meeting is convened for consideration of the motion of No-Confidence, they jointly will ensure that no quorum for the meeting is there, and, by virtue of Rule 7 of the Rules, the notice given under Rule 2 as well as sub-section (1) of Section 245 of the Andhra Pradesh Panchayat Raj Act, 1994, (for short "the Act") shall lapse, and, by virtue of operation of second proviso to sub-section (1) of Section 245 of the Act, no such notice can be made against the same person more than once during the term of his Office. The petitioners, thus, apprehend that they would be, in future, deprived of moving such No-Confidence Motion against the Chairman, and, thus, warranting the second proviso to sub-section (1) of Section 245 to be declared as *ultra vires* of the Constitution of India and also the notice served by 31 members to be fraud on law. Learned counsel for the petitioners submits that in two Districts, Ranga Reddy and Warangal, this exercise has already been done by moving similar motions and to ensure that on the day when the meeting is called, the meeting did not take place for want of quorum, and, by operation of Rule 7 of the Rules, the notice under Rule 2 read with sub-section (1) of Section 245 shall lapse. He submits that even in Ranga Reddy and Warangal Districts, the Members of Zilla Parishad Territorial Constituencies, because of the second proviso to sub-section (1) of Section 245 of the Act, are deprived of moving No-Confidence Motion for the second time.

Learned counsel for the petitioners also submits that 31 Telugu Desam Party members served, on 5th June, 2004, a notice expressing their desire to make a motion expressing want of confidence in the Chairperson of Zilla Parishad, Prakasam on 3rd respondent, and, after notice was served, the District Collector, examined six persons, verified about the identity and signatures, and, proceeded to issue notice on 12.6.2004 convening the meeting on 1.7.2004 at 11 a.m. in the Old Zilla Parishad Office Meeting Hall, Ongole, for consideration of No-Confidence Motion. Learned counsel for the petitioners apprehends that there will be no quorum in the meeting since Telugu Desam Party Members want their Chairman to continue and to create a situation in which no second No-Confidence Motion be moved against him during his tenure, and, for that reason, he prays that while retaining the Writ Petition for being considered on merits, the meeting scheduled to be convened on 1.7.2004 be stayed, or, in any case, in case, the Court be of the view that there cannot be any stay of the meeting, the outcome of the meeting be made subject to the result of the Writ Petition, and, thirdly, he says that the Petition may be taken up for consideration.

On the submissions made by the learned counsel for the petitioners, we are of the view that the petitioners have not yet got any cause of action to challenge the legality and validity of the notice or the provisions of the law. The Petition is premature. Petitioners cannot be said to be having any grievance, at this stage. Second proviso to sub-section (1) of Section 245 will come into operation only in the event of a situation arising whereby second No-Confidence Motion against the Chairman of Zilla Parishad has to be moved. Petitioners can be said to be getting such a cause of action only in the event of such a situation arising. But, here, even the first No Confidence Motion, for

which, notice has been given, has not been subjected to vote in the meeting, which is yet to take place on 1.7.2004. There cannot be a stay of such a meeting, more particularly, in the absence of those who have given notice of no confidence, since they are not made parties to the Writ Petition. One cannot even presume as of today that they will not appear and participate in the meeting. Assuming, for one reason or other, that there is no quorum for the meeting and notice is allowed to lapse, thereafter only, one can say that cause of action arise for questioning the legality or validity of the provisions which are under challenge in the Writ Petition, provided, it is demonstrated that effort was made to move No-Confidence Motion for the second time, on which no action was taken, or, no action is being taken because of the second proviso to sub-section (1) of Section 245 of the Act. As of today, the entire exercise commenced by the petitioners is nothing, but, only on hypothetical situation. Petitioners have not yet got the cause to move second No-Confidence Motion. Only in the event of first motion not being carried successfully or notice lapses and the petitioners intend to move second motion, then only, they can approach the Court and seek for the relief prayed for to declare the second proviso to sub-section (1) of Section 245 of the Act to be bad in law or unconstitutional. For this reason, while observing that Writ Petition is premature, and, in such like petitions, Courts will not interfere on hypothetical situations, we dismiss the Writ Petition with liberty reserved to the writ petitioners to question the said provision, in case, any cause would arise to them when they intend to move second No Confidence Motion.

DEVINDER GUPTA, C.J.

30.6.2004.

G.ROHINI, J.

VR

TO

- 1 The Secretary to Government of A.P, Panchayat Raj, Secretariat Building, Saifabad, Hyderabad
- 2 The Collector, Prakasham District, Ongole
3. Two CCs to Advocate-General, High Court Bldgs., Hyd. (OUT).
4. 2 CD copies.